The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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| JULIE DALESSIO, an individual,<br><br>Plaintiff,<br>v.<br><br>UNIVERSITY OF WASHINGTON,<br><br>Defendant. | Case No. 2:17-cv-00642 MJP<br><br>Plaintiff's **reply re: motion to compel discovery, Dkt. 52**<br><br>Note on Motion Calendar:<br>**November 17, 2017** |

**The Plaintiff objects to Defendant, UW's response (Dkts. 55-56, 56-1, 56-2, 56-3) and moves to strike it as:**

1. Not in direct response to the points described and enumerated in the motion;

2. Untrue, deliberately misleading, trivializing, demeaning, misrepresentations and mischaracterizations, meant to cause embarrassment and prejudice the administration of justice (RPC 8.4, 4.4, 4.1);

3. Unnecessarily cumulative (FRE 403);

4. Impertinent, irrelevant (FRE402); and/or

5. *Evasive or Incomplete Disclosure, Answer, or Response. (FRCP 37 (a)(4))*

The UW has objected to all of Plaintiff's Interrogatories and Requests for Production (*Dkts. 56-1, 56-2*), has provided only incomplete and misconstrued responses and has attempted to shame, embarrass and intimidate the Plaintiff, and *the UW requests the court grant a*

*protective order regarding discovery,* to allow their behavior because, in their own words, "The University filed a Motion for Summary Judgment on all claims in August of 2017 that will likely dismiss all or most of Plaintiff's claims, potentially making any discovery requests in dispute moot."(*Dkt. 55 p.2*)

The Plaintiff submits to the court that the **evasive and incomplete responses from UW** have caused " annoyance, embarrassment, oppression, or undue burden or expense" to all and that UW's often repeated assertions that the Court will dismiss all claims before any discovery, before a full evidentiary hearing, is further evidence of obstructive behavior. UW's request for a protective order to prevent discovery should be denied.

On October 23, 2017 the parties met again to discuss Plaintiff's remaining discovery requests. (*Decl. Plaintiff*) Prior to this meeting *(*Oct. 16th) Plaintiff served her third discovery requests*,* a simplified version of previous requests.(*id. Attachment 1*) Rather than respond to these simplified requests, Counsel for UW chose to respond to this motion, repeating and reproducing absurd misinterpretations and trivializing, demeaning responses to Plaintiff's previous discovery requests.

Plaintiff submits the following IN **Direct Reply to Defendant's Response** (Dkt. 55).

The entire "Introduction" and "Statement of Facts," (*Dkt. 55 pp. 1-3*) should be stricken.[1]

**IV. A.** Contrary to UW's assertion, Plaintiff ***is*** claiming that **UW has improperly withheld**

[1](Not in direct response; Untrue, deliberately misleading, trivializing, demeaning, misrepresentations and mischaracterizations, meant to cause embarrassment and prejudice the administration of justice (RPC 8.4, 4.4, 4.1); Impertinent, irrelevant (FRE402);

**Public Records** *(see Dkt. 52 p.10 line 11)*. This entire section is offensive mischaracterizations of Plaintiff's emotions and motives and misrepresentations of Plaintiff's claims and should be stricken.

**IV. B.** "tables of authorities, signature blocks, and certificates of service need not be included within the page limit." (*LCR7(e)(6)*) Plaintiff's motion is within the page limit.

**IV. C.** Any records that UW is maintaining ***pertaining to Plaintiff*** are relevant and discoverable, even if they are not admissible as evidence.(FRCP 26(b)(1))

RFP 3 requires that Counsel question the original custodians of Plaintiff's employee records regarding their knowledge of any documents pertaining to Plaintiff. Counsel for Defense agreed to "reach out to his client" to contact these persons in exchange for Plaintiff's agreement to extend discovery deadlines, but has not done so.(*Decl. Plaintiff)*

RFP 5 The Public Records (PR-15-00570 and PR-16-00760) contain evidence that Plaintiff's supervisor was paying her salary from government grants for tasks that weren't assigned to the Plaintiff.(*Dkt. 43 p.6*) The requested evidence would tend to make the fact more probable, and is relevant to Plaintiff's claims that her supervisor's perception of her as a whistleblower was a factor for retaliation that led to her forced resignation and retaliation that continued in UW's compilation, preservation and dissemination of libelous, defamatory and deliberately misleading records that are damaging to Plaintiff's reputation, even to this day.

RFP 6 The UW Office of Public Records has produced new evidence of violations of the Fair Labor Standards Act (29 CFR sec 791.2) by Plaintiff's supervisor and her superior, pertaining to Plaintiff (PR-2017-00737).[2] This is relevant to Plaintiff's claims of retaliation based on the perception that she would be a whistleblower was a factor in her forced resignation, and that retaliation continued in UW's compilation, preservation and dissemination of libelous, defamatory and deliberately misleading records that are damaging to Plaintiff's reputation. Additional relevant records may exist.

Defendant's mischaracterizations of Plaintiff's motives are offensive and impertinent and should be stricken.(*Dkt. 55 p. 5*)

**IV. D.** Interrogatory 1: UW has not responded adequately to **identify** persons responding to discovery requests. UW has produced no evidence that they have addressed discovery requests to relevant persons, and should be ordered to do so.

Interrogatory 2: Pertaining to relevant records, UW has not provided a "means of identification sufficient to identify the document for purposes of a request for production." While Defendant has provided lists of persons involved with Plaintiff's records, and **multiple** copies of communications regarding such, UW has not sufficiently responded to this.

Interrogatory 3: UW does not respond adequately to identify the documents produced in the pertinent public records. UW deliberately misinterprets the request and focuses on objections to providing information that is already evident in the documents, such as the

[2] UW improperly produced this public record, including personally identifying information.

name of the author. UW has not provided any identification of PR 2015-00570 and the information UW provided regarding PR 16-00760 is inaccurate, uninterpretable (file numbers provided do not match those in Plaintiff's copy of the PR), vague and incomplete. UW did not provide any description of the **1431 pages that were withheld from this PR**.

Plaintiff does not have copies of the non-redacted documents that were provided in response to PRR 2015-00570 for "all records pertaining" to Plaintiff, and UW has objected to production. UW has not provided any information as to how/why this different set of records was selected and produced for her neighbor. These questions should be answered with proper identification of these records. This information **should be** readily obtainable by the Defendant, is entirely relevant and necessary in proving the actions of UW personnel in maintaining and responding to requests for Plaintiff's employee records, and will tend to prove the fact that these records were improperly maintained and released. The UW did not find it unduly burdensome to produce Plaintiff's records to David Betz.

Interrogatory 8: UW has a duty to disclose related cases (LCR 26(f)). UW's response is incomplete and counsel's characterization of Plaintiff's emotions is offensive, impertinent, and should be stricken.

Interrogatory 10: The records of any past and present custodians of Plaintiff's records are relevant to this case and should be readily available to the Defendant. UW has not provided the requested records of relevant persons as counsel falsely claims, and Plaintiff has not requested information from "unrelated employees."

Interrogatory 12: Would be appropriately addressed to the persons named in disclosures, and would be highly probative of when and which custodians of Plaintiff's records were involved in the destruction/loss, compilations, and different selections and disseminations of her records.

RFP 9: Plaintiff has made a public records request for "copies of termination settlement agreements between employees and the UW. Please produce the 50 most recent documents responsive to this request." The Plaintiff's settlement agreement contains an invalid waiver of her rights under the Americans with Disabilities Act and the Age Discrimination in Employment Act.[3] The Plaintiff received no consideration for the waiver of her rights.[4] The Agreement clearly describes that the payment she received from UW was $1546 for "back wages" and $13,454 "in lieu of wages." (*Dkt. 30-3 p.3 at #5*) The agreement bars Plaintiff's rights to file complaints of discrimination against UW forever (*id at #7*), and bars the Plaintiff from speaking about the terms *(id at p.4 #16*) in violation of the ADEA and OWBPA. In addition, the Agreement is unenforceable because UW used undue influence and improper conduct to coerce Plaintiff to sign.(*Dkt. 43 p.7 line 18*) The UW has insinuated that similar terms "would likely invalidate a majority of the currently existing settlement agreements" (*Dkt. 45, p. 9*)

F. Interrogatory #7: Defendant has neither denied or identified any privileged conduct or

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[3] 29 USC 626(f)(2) waiver was not "knowing and voluntary since not given 21 day notice to consider, 29 CFR 1625.22(e)(6) 21 day time period waiver not valid because of threat to withdraw offer if not signed that day,

[4] Waivers of ADEA rights must be in exchange for valuable consideration

documents pertaining to Plaintiff that might have been withheld, nor have they identified persons responding to this (or any) interrogatory.

RFP #7: Plaintiff requests records of UW employees who worked in similar positions in the same division, to provide evidence of UW's habits or discrimination in producing employees' personal, confidential information, as well as to provide evidence of employment discrimination. While the records of the two individuals already produced contain probative evidence of improper public records releases, discrimination, and violations of the Fair Labor Standards Act by Plaintiff's supervisor, the remaining requests will likely reveal additional evidence.

Interrogatory 2: Proper identification of relevant persons and documents will answer all of Plaintiff's questions. Interrogatory 11: Plaintiff requests only relevant records.

G. Plaintiff has incurred **costs for legal consultations** pertaining to discovery.

Dated: November 17, 2017

Signed: s/ julie dalessio

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Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

**Federal Rules of Civil Procedure (FRCP)**

Rule 33(b)(4) *Objections.* The grounds for objecting to an interrogatory must be stated with specificity.

Rule 34(b)(2)(C) Objections. An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

Rule 34(b)(2)(E) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information: (i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

**Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions**

(a) MOTION FOR AN ORDER COMPELLING DISCLOSURE OR DISCOVERY. (1) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(a)(3) *Specific Motions.* (A) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(a)(3)(B) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to produce documents or fails to respond that inspection will be permitted—

or fails to permit inspection—as requested under Rule 34.

(a)(4) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(5)(A) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.*

26(b) DISCOVERY SCOPE AND LIMITS.
(1) Scope in General. Unless otherwise limited by court order,

the scope of discovery is as follows: Parties may obtain discov- ery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the impor- tance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(3) Trial Preparation: Materials.
(A) Documents and Tangible Things. Ordinarily, a party

may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without

undue hardship, obtain their substantial equivalent by

other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation

FRCP 26 (b)(5)(A) Any information withheld under claims of privilege or protection must be expressly claimed and described.

FRCP 26 (b)(5) *Claiming Privilege or Protecting Trial-Preparation Materials.*

(A)*Information Withheld.* When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:
(i) expressly make the claim; and
(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

RCW 42.56.070 Documents and indexes to be made public—

(1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if:

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency may establish, maintain, and make available for public inspection and copying a statement of the actual costs that it charges for providing photocopies or electronically produced copies, of public records and a statement of the factors and manner used to determine the actual costs. Any statement of costs may be adopted by an agency only after providing notice and public hearing.

(a)(i) In determining the actual cost for providing copies of public records, an agency may include all costs directly incident to copying such public records including:

(A) The actual cost of the paper and the per page cost for use of agency copying equipment; and

(B) The actual cost of the electronic production or file transfer of the record and the use of any cloud-based data storage and processing service.

(ii) In determining other actual costs for providing copies of public records, an agency may include all costs directly incident to:

(A) Shipping such public records, including the cost of postage or delivery charges and the cost of any container or envelope used; and

(B) Transmitting such records in an electronic format, including the cost of any transmission charge and use of any physical media device provided by the agency.

(b) In determining the actual costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and send the requested public records may be included in an agency's costs.

(8) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the administrative procedure act.

**Local Rules W.D. Wash.**

LCR7(e)(6) The court may refuse to consider any text, including footnotes, which is not included within the page limits. Captions, tables of contents, tables of authorities, signature blocks, and certificates of service need not be included within the page limit.